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HARVARD LAW REVIEW

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THE present number completes the first volume of the HARVARD LAW REVIEW. In starting the magazine a year ago, the editors expressed the hope that the REVIEW might be of service, not only to those who were interested in the work of the School, but also to the profession at large. That this hope has been realized to some extent, the success of the present volume justifies us in saying. In the second volume the same general policy will be followed. Professor Langdell will complete his series of articles on "Equity Jurisdiction," Professor Ames will treat of the history and development of "Assumpsit," and Professor Keener will contribute an article on "Mistakes of Law." The list of contributors outside the School is indicated elsewhere.

THE March "Atlantic" contains an interesting article by Prof. James B. Thayer, defining the exact change effected in the status of the Indians by the Dawes Severalty Bill, which became a law on Feb. 8.[1] We give the following outline:—

The law does not abolish all the civil and political disabilities of the Indians; it deals with two subjects only, the ownership of land and citizenship.

The following are the chief provisions of the law as to the ownership of land:—

1. It authorizes (but does not require) the President to proceed at once to a survey of any Indian reservation containing good agricultural and grazing land, and to allot the land in specified amounts to such Indians as may apply for it in the designated way.

2. It authorizes the Secretary of the Interior, four years from the time that an allotment is ordered on any specific reservation, to compel each reluctant head of a family and single person among the Indians to take an allotment.

[1] The Dawes Bill and the Indians. The Atlantic Monthly, vol. lxi. p. 315.

3. It provides that wandering Indians may settle upon any unappropriated public lands, and obtain an allotment without the usual payment of fees.

4. It provides that the Indian owner of land cannot, for twenty-five years, convey this land or make "any contract . . . touching the same."

5. It authorizes the Secretary of the Interior, on the completion of the allotments, or sooner, if the President thinks it "for the best interests" of the tribe, to purchase from the Indians any part of the reservations not needed for allotments, which shall be disposed of only to actual settlers, in tracts not exceeding one hundred and sixty acres to one person. The purchase-money paid by the Government is to be deposited on interest in the United States Treasury until appropriated by Congress for the education and civilization of the Indians of the reservation for whose land it is paid.

Section 6 of the Severalty law deals with the question of citizenship. Its chief provisions are as follows: (1.) It declares that every Indian who, before the law, has voluntarily left his tribe and adopted "the habits of civilized life" (and perhaps every Indian who may thereafter do this) shall be a citizen of the United States. (2.) It gives national citizenship, at once, to every Indian who shall have received an allotment of land under this law, or under any other law or treaty. (3.) It provides that when all the Indians on any reservation have thus been made citizens (and perhaps as each, in succession, becomes a citizen), they are to pass from under the special control of Congress, and "shall have the benefit of and be subject to the laws, both civil and criminal, of the State or Territory in which they may reside."

The following are pointed out as the chief omissions in the bill as to which further legislation is needed: (1.) The law does not include the case of ten or eleven excepted tribes, among which are the "civilized tribes" in the Indian Territory. (2.) It provides the reservations with no courts and no system of law to enforce the rights of the Indians and other citizens. (3.) It leaves the Indian land-owners with a much restricted right to the use of their land. (4.) It makes no provision for the construction of roads or other public improvements in the reservation. (5.) It provides for no system of education among the new citizens. (6.) It preserves untouched the non-intercourse reservation system, with unfettered political control. (7.) It offers no guarantee that the control of the United States over the Indians may not be taken away by artful wording of the acts for the admission of new States.

DR. ANDREW P. PEABODY, in his book of "Harvard Reminiscences"[1] makes the following interesting remarks concerning the origin and earlier professors of the Harvard Law School:—

"Chief Justice Parker, of the Supreme Court of Massachusetts, was Royall Professor of Law from 1816 to 1827. He was the first professor of law in the University. The Law School was established in 1817, at his suggestion. He never bore an active part in its administration, though it undoubtedly had the benefit of his advice and influence. The income of the Royall Professorship was barely sufficient to pay for a course of twelve or more lectures to each successive senior college class. Judge Parker's course comprised such facts and features of the common and

[1] Harvard Reminiscences. Andrew Preston Peabody, pp. 8, 57.

statute law as a well-educated man ought to know, together with an analysis and exposition of the Constitution of the United States. His lectures were clear, strong, and impressive; were listened to with great satisfaction, and were full of materials of practical interest and value."

Of Joseph Story he writes: "Dr. Dane, in establishing the professorship that bears his name, requested that Judge Story might be its first incumbent. In accordance with this wish and the concurrent desire of all the friends of the college, the appointment was made and accepted, in 1829. At the same time Mr. Ashmun was chosen Royall Professor of Law, with the understanding that he should have the immediate supervision of the Law School, while Judge Story was to devote to it such time as he could spare; and this was no little time, for he knew how to make his days elastic. There never was a man who did more work than he, and yet he knew not how to slight his work, or to put into it less of heart and soul than it could hold. With a body that seemed incapable of fatigue, he had the alertness and vivacity of youth, and imparted his own enthusiasm to his pupils.

"I had repeated opportunities of profiting by his instruction. In the moot courts, at which he presided in the Law School, he drafted juries among the divinity students, and I served several times in that capacity."

A NOVEL case, involving the question of larceny, was tried in the District Court at Providence, R.I., on Jan. 21. The defendant, a married woman, was charged with the larceny of a will from the deputy town-clerk. Her father had recently died, leaving $5 to the defendant, and the rest of his property, estimated at $60,000, to her brother. On the 9th inst. the will was presented to the Court of Probate, read and referred to the next meeting of the court with a notice of intended probate. The clerk of the Probate Court not being present at the meeting, the deputy town-clerk was elected clerk *pro tem.*, and retained the will in his possession. The next day the defendant entered the town-clerk's office and asked to see the will. The deputy town-clerk, knowing her to be the testator's daughter, gave it to her, whereupon she began to tear it into minute fragments in spite of his efforts to prevent her. When asked the motive of her act, she replied: "It was something that had to be done." She attempted to burn the fragments in the office stove, but being prevented, took them away, and burned them at her home.

The warrant on which she was arrested was based on ch. 242, sect. 11, of the Public Statutes of Rhode Island, which declares that "every person who shall steal any . . . assurance whatsoever, respecting any property, real or personal, shall be deemed guilty of larceny." The code gives no definition of the word "steal."

The court decided that the defendant was not guilty of larceny, "as the evidence showed that the woman had taken the will, not with intent to appropriate it to her own use, but with intent to destroy, and that she was in legal possession of it."

On Feb. 13 the destroyed will was regularly probated. The contents of the will had been read and noted by the court and clerk at the first meeting; the lawyer who drew up the will swore to its contents; and the son, who was the principal beneficiary, produced a carefully preserved copy, which he had retained in his possession.